# PROPOSED RULE MAKING

**CR-102 (December 2017)**  
(Implements RCW 34.05.320)  
Do **NOT** use for expedited rule making

<table>
<thead>
<tr>
<th>Agency: Health Care Authority, PEBB Admin #2022-02.04</th>
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</thead>
<tbody>
<tr>
<td>☒ Original Notice</td>
</tr>
<tr>
<td>☐ Supplemental Notice to WSR _____</td>
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<tr>
<td>☐ Continuance of WSR _____</td>
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<tr>
<td>☒ Preproposal Statement of Inquiry was filed as WSR 22-04-099; or</td>
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<tr>
<td>☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or</td>
</tr>
<tr>
<td>☐ Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or</td>
</tr>
<tr>
<td>☐ Proposal is exempt under RCW _____</td>
</tr>
</tbody>
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**Title of rule and other identifying information:**  
(designate subject)

WAC 182-12-205 May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage?

<table>
<thead>
<tr>
<th>Hearing location(s):</th>
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<tbody>
<tr>
<td><strong>Date:</strong> June 7, 2022</td>
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<tr>
<td><strong>Time:</strong> 10:00 AM</td>
</tr>
<tr>
<td><strong>Location:</strong> (be specific) In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Health Care Authority continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington State.</td>
</tr>
<tr>
<td><strong>Comment:</strong> To attend the virtual public hearing, you must register in advance: Register in advance for this webinar: <a href="https://us02web.zoom.us/webinar/register/WN_edPzYSMR9CMXCEzVlvwWw">https://us02web.zoom.us/webinar/register/WN_edPzYSMR9CMXCEzVlvwWw</a> If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.</td>
</tr>
</tbody>
</table>

**Date of intended adoption:** Not sooner than June 8, 2022  
(Note: This is **NOT** the effective date)

**Submit written comments to:**  
Name: HCA Rules Coordinator  
Address: PO Box 42716, Olympia WA 98504-2716  
Email: arc@hca.wa.gov  
Fax: (360) 586-9727  
Other: By (date) June 7, 2022

**Assistance for persons with disabilities:**  
Contact HCA Rules Coordinator  
Phone: (360) 725-1305  
Fax: (360) 586-9727  
TTY: Telecommunication Relay Services (TRS): 711  
Email: arc@hca.wa.gov  
Other: By (date) May 20, 2022
Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to implement policy resolutions to support the Public Employees Benefits Board (PEBB) Program:

- Amended WAC 182-12-205 to implement Policy Resolution PEBB 2022-03 Medicare Advantage Prescription Drug (MA-PD) plan enrollment during the gap months and Policy Resolution PEBB 2022-04 Deferring PEBB retiree insurance coverage when the subscriber becomes eligible for the employer contribution.

Reasons supporting proposal: See purpose statement.

Statutory authority for adoption: RCW 41.05.021, 41.05.160, Policy Resolutions PEBB 2022-03 and PEBB 2022-04.

Statute being implemented: RCW 41.05.021, 41.05.160

Is rule necessary because of a:

- Federal Law? ☐ Yes ☒ No
- Federal Court Decision? ☐ Yes ☒ No
- State Court Decision? ☐ Yes ☒ No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Name of proponent: (person or organization) Health Care Authority ☒ Governmental

Name of agency personnel responsible for:

<table>
<thead>
<tr>
<th>Name</th>
<th>Office Location</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drafting:</td>
<td>Stella Ng, PO Box 42716, Olympia WA 98504-2716</td>
<td>360-725-0883</td>
</tr>
<tr>
<td>Implementation:</td>
<td>Barbara Scott, PO Box 42716, Olympia WA 98504-2716</td>
<td>360-725-0830</td>
</tr>
<tr>
<td>Enforcement:</td>
<td>Jean Bui, PO Box 42716, Olympia WA 98504-2716</td>
<td>360-725-1858</td>
</tr>
</tbody>
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Is a school district fiscal impact statement required under RCW 28A.305.135? ☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?
☐ Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name:
Address:
Phone:
Fax:          
TTY:          
Email:       
Other:       
☒ No: Please explain: RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

### Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

- [ ] This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

  **Citation and description:**

- [ ] This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

- [ ] This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

- [ ] This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:
  - [ ] RCW 34.05.310 (4)(b) (Internal government operations)
  - [ ] RCW 34.05.310 (4)(c) (Incorporation by reference)
  - [ ] RCW 34.05.310 (4)(d) (Correct or clarify language)
  - [ ] RCW 34.05.310 (4)(e) (Dictated by statute)
  - [ ] RCW 34.05.310 (4)(f) (Set or adjust fees)
  - [ ] RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

- [ ] This rule proposal, or portions of the proposal, is exempt under RCW _____.

**Explanations of exemptions, if necessary:**

**COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES**

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- [ ] No  Briefly summarize the agency’s analysis showing how costs were calculated. These rules do not apply to small businesses.

- [ ] Yes  Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: 
Address: 
Phone: 
Fax: 
TTY: 
Email: 
Other: 

**Date:** May 3, 2022

**Name:** Wendy Barcus

**Title:** HCA Rules Coordinator

**Signature:**

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WAC 182-12-205 May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage? (1) The following individuals may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage:

(a) A retiring employee or a retiring school employee;
(b) A dependent becoming eligible as a survivor; or
(c) A retiree or a survivor enrolled in PEBB retiree insurance coverage.

(2) A subscriber described in subsection (1) of this section who defers enrollment in PEBB retiree insurance coverage also defers enrollment for all eligible dependents, except as described in subsection (3)(c) of this section.

(3) A subscriber described in subsection (1) of this section who chooses to defer enrollment in PEBB retiree insurance coverage must maintain continuous enrollment in one or more qualifying coverages as described in this subsection or WAC 182-12-200. A gap of thirty-one (31) days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period. A subscriber who chooses to defer enrollment, defers enrollment in PEBB medical and PEBB dental. A subscriber must be enrolled in PEBB medical to enroll in PEBB dental. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(a) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in employer-based group medical as an employee or the dependent of an employee, or such medical insurance continued under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

(b) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled as a retiree or the dependent of a retiree in a federal retiree medical plan.

(c) Beginning January 1, 2006, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109. Dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, subscribers who are not eligible for Parts A and B of medicare may defer enrollment in PEBB retiree insurance coverage when the subscriber is enrolled in exchange coverage.

(e) Beginning July 17, 2018, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

(4) To defer enrollment in PEBB retiree insurance coverage, the required forms must be submitted to the PEBB program.

(a) For a retiring employee or a retiring school employee who meets the substantive eligibility requirements as described in WAC 182-12-171(2), enrollment will be deferred the first of the month following the date their employer-paid coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB pro-
gram no later than ((sixty)) 60 days after the employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) For an official leaving public office who meets the requirements as described in WAC 182-12-180(1), enrollment will be deferred the first of the month following the date the official leaves public office. The forms must be received by the PEBB program no later than ((sixty)) 60 days after the official leaves public office.

(c) For an employee or a school employee determined to be retroactively eligible for disability retirement who meets the requirements as described in WAC 182-12-211 (1)(a) through (c), enrollment will be deferred as described in WAC 182-12-211 (2) or (3). The forms and formal determination letter must be received by the PEBB program no later than ((sixty)) 60 days after the date on the determination letter.

(d) For an eligible survivor, the dependent must meet the requirements described below and the forms must be received by the PEBB program within the time described:

(i) For a survivor of an employee or a school employee who meets the requirements as described in WAC 182-12-265 (1) or (3), enrollment will be deferred the first of the month following the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends. The forms must be received by the PEBB program no later than ((sixty)) 60 days after the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or SEBB insurance coverage ends.

(ii) For a survivor of an official who meets the requirements as described in WAC 182-12-180(2), enrollment will be deferred the first of the month following the date of the official's death or the date the survivor's PEBB insurance coverage ends. The forms must be received by the PEBB program no later than ((sixty)) 60 days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends.

(iii) For a survivor of a retiree who meets the requirements as described in WAC 182-12-265(2), enrollment will be deferred the first of the month following the date of the retiree's death. The forms must be received by the PEBB program no later than ((sixty)) 60 days after the retiree's death.

(iv) For a survivor of an emergency service personnel killed in the line of duty who meets the requirements as described in WAC 182-12-250, enrollment will be deferred the first of the month following the later of one of the events described in WAC 182-12-250 (5)(a) through (d). The forms must be received by the PEBB program no later than ((one hundred eighty)) 180 days after the later of one of the events described in WAC 182-12-250 (5)(a) through (d).

(e) For an enrolled retiree or survivor who submits the required forms to defer enrollment in PEBB retiree insurance coverage, enrollment will be deferred effective the first of the month following the date the required forms are received by the PEBB program. If the forms are received on the first day of the month, enrollment will be deferred effective that day.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage plan (MA), then enrollment in PEBB retiree insurance coverage will be deferred effective the first of the month following the date the ((medicare advantage)) MA plan disenrollment form is received.

(5) A retiree who meets substantive eligibility requirements in WAC 182-12-171(2) and whose employer-paid coverage, COBRA coverage, or
continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to have submitted the deferral form at that time, but must meet all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

(6) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3)(a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in one or more qualifying coverages as described in subsection (3)(a) through (e) of this section. A gap of ((thirty-one)) 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period:

(a) A subscriber who defers enrollment while enrolled in employer-based group medical or such medical insurance continued under COBRA coverage or continuation coverage may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their employer-based group medical or such coverage under COBRA coverage or continuation coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ((sixty)) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the employer-based group medical coverage, COBRA coverage, or continuation coverage ends.

( Exception: Enrollment in the PEBB program’s medicare advantage or medicare advantage prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month employer-based group medical, COBRA coverage, or continuation coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage prescription drug plan until a special enrollment period as described in WAC 182-08-198(2)).

Note: Enrollment in the PEBB program’s MA or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) A subscriber who defers enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When the federal retiree medical plan coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ((sixty)) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

( Exception: Enrollment in the PEBB program’s medicare advantage or medicare advantage prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the federal retiree medical plan coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage prescription drug plan until a special enrollment period as described in WAC 182-08-198(2)).

[ 3 ] OTS-3777.1
Note: Enrollment in the PEBB program’s MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA-PD coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(c) A subscriber who defers enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109 may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their medicaid coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ((sixty)) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

(Exception: Enrollment in the PEBB program’s medicare advantage or medicare advantage prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month medicaid coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage prescription drug plan until a special enrollment period as described in WAC 182-08-198(2)).

Note: Enrollment in the PEBB program’s MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA-PD coverage begins.

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree or survivor was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends. The required forms must be received by the PEBB program no later than the last day of the calendar year in which the medicaid coverage ends.

(d) A subscriber who defers enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When exchange coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ((sixty)) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

(Exception: Enrollment in the PEBB program’s medicare advantage or medicare advantage prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month exchange coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage prescription drug plan until a special enrollment period as described in WAC 182-08-198(2)).

Note: Enrollment in the PEBB program’s MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA-PD coverage begins.

(e) A subscriber who defers enrollment while enrolled in CHAMPVA will have a one-time opportunity to enroll in a PEBB health plan by
submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When CHAMPVA coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ((sixty)) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after CHAMPVA coverage ends.

(Exception: Enrollment in the PEBB program’s medicare advantage or medicare advantage prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month CHAMPVA coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).

Note: Enrollment in the PEBB program’s MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(7) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3)(a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan if they receive formal notice that the authority has determined it is more cost-effective to enroll them or their eligible dependents in PEBB medical than a medical assistance program.

(8) If a subscriber elects to enroll a dependent in PEBB health plan coverage as described in subsection (6) or (7) of this section, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the subscriber.

(Exception: If a subscriber selects a medicare supplement plan or a medicare advantage-prescription drug MA-PD plan, nonmedicare enrollees will be enrolled in the Uniform Medical Plan Classic. If a subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(9) An enrolled retiree or a survivor who requests to voluntarily terminate their enrollment in PEBB retiree insurance coverage must do so in writing. The written termination request must be received by the PEBB program. A retiree or a survivor who voluntarily terminates their enrollment in a PEBB health plan also terminates enrollment for all eligible dependents. Once coverage is terminated, a retiree or a survivor may not enroll again in the future unless they reestablish eligibility for PEBB insurance coverage by becoming newly eligible. Enrollment in a PEBB health plan will terminate on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, enrollment will terminate on the last day of the previous month.

(Exception: When a subscriber or their dependent is enrolled in a medicare advantage MA plan, then enrollment will terminate on the last day of the month when the medicare advantage MA plan disenrollment form is received.

(10) When a retiree becomes eligible for the employer contribution toward PEBB benefits, PEBB retiree insurance coverage will be automatically deferred. The subscriber will be exempt from the deferral form requirement. When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they must enroll or defer PEBB retiree insurance coverage as described in WAC 182-12-171, 182-12-200, and this section.